

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 7, 2006

Opposition No. **92043753**

Ernestina Castro, S.A. de C.V.

v.

Doceira Campos Do Jordao Ltda.

Jyll S. Taylor, Attorney:

On April 25, 2005, opposer filed a combined motion (1) to extend the discovery period; and (2) to compel or, alternatively, for discovery sanctions in the form of judgment.

Applicant did not file a brief in response.

Opposer's Motion for Judgment as a Discovery Sanction Premature

Opposer's motion for judgment as a discovery sanction is premature inasmuch as opposer did not seek a Board order compelling applicant to respond to any unanswered discovery requests before filings its motion.¹ See Trademark Rule 2.120(g)(1). Accordingly, the motion will not be further considered.

Motion to Compel and Motion to Extend Granted as Uncontested

Turning now to opposer's motion to compel and motion to extend, as noted previously herein, applicant did not file a

¹ In the alternative, opposer has requested that such an order issue.

brief in response to the motion. Accordingly, opposer's motion is granted as conceded. See Trademark Rule 2.127(a).

In view thereof, applicant is hereby ordered to serve no later than **THIRTY DAYS** from the mailing date of this order its responses, without objection, to opposer's outstanding discovery request as enumerated in the motion to compel. See *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, (TTAB 1987).

In the event applicant fails to respond to opposer's discovery requests as ordered herein, opposer's remedy lies in a motion for judgment pursuant to Trademark Rule 2.120(g)(1), 37 CFR Section 2.120(g).

Motion to Strike Untimely

Opposer's motion, filed via certificate of mailing dated May 11, 2005, to strike is untimely and will not be further considered, having been filed while this proceeding was suspended pending consideration of opposer's motion to compel. See Trademark Rule 2.120(e)(2).

Nonetheless, as opposer points out, applicant's answer to the amended notice of opposition was due on or before April 7, 2005. Inasmuch as applicant's answer was not filed until April 11, 2005 at the earliest,² applicant is technically in default. See Trademark Rule 2.106(a); and Fed. R. Civ. P. 55.

² The Boards notes that the date on the certificate of mailing on the amended answer is illegible. However, the certificate of service is dated April 11, 2005 and the amended answer was received by the

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that opposer is not prejudiced by applicant's up to 15-day late filing and, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to this action. However, applicant has offered no explanation as to why it failed to timely file its answer. In view of the foregoing, applicant is allowed until **TWENTY-FIVE DAYS** from the mailing date of this order to explain why its answer was filed up to fourteen days late. If no response is received, the Board will presume that applicant has lost interest in defending this case, and judgment may be entered against applicant.

Discovery and trial dates are reset as indicated below:

THE PERIOD FOR DISCOVERY TO CLOSE: June 5, 2006

Office on April 22, 2005. As such, applicant's answer was between four and fifteen days late.

30-day testimony period for party in position of plaintiff to close:	September 3, 2006
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30-day testimony period for party in position of defendant to close:	November 2, 2006
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15-day rebuttal testimony period to close:	December 17, 2006
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In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Rule 2.125.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

The Board regrets any inconvenience to the parties caused by the delay in considering these matters.
